

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1855 of 1987

with

SPECIAL CIVIL APPLICATION No 1908 of 1987

and

SPECIAL CIVIL APPLICATION No 1917 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AMBARAM NATHUBHAI

Versus

COLLECTOR

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Appearance: (In all special civil applications)

MRS KETTY A MEHTA for Petitioner

MR MUKESH A PATEL for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. As in all these three matters, identical issues

have arisen for the consideration of the court, on the request of the counsel for the parties, the same are being taken up for hearing together and are being disposed of by this common judgment. Both the counsel for the parties advanced their arguments with reference to special civil application no. 1855 of 1997.

2. The land in dispute was owned and possessed by one Nathubhai Mangaldas Intwala. The original owner, predecessor in title of the petitioner applied for grant of permission for nonagricultural use of the land to the competent authority. The competent authority under the order dated 4th September, 1970 granted nonagricultural use permission in favour of the predecessor in title of the petitioner. After this permission, the predecessor in title of the petitioner made plots in the land in dispute and one of the plots was purchased by the petitioner in this case and similarly the petitioners in two other petitions also purchased the plots. The permission for nonagricultural use of the land was granted inter-alia on the condition that the construction on the land is to be completed within prescribed period of time stated therein. The Collector, Surat taking it to be a case of breach of conditions No.4 and 13 of the nonagricultural use of the land issued notice to the petitioner for cancellation of the said permission. This notice was replied by the petitioner. The petitioner pointed out in the reply to the notice that he has not committed any breach of conditions. It is stated that the competent authority under the Urban Land (Ceiling & Regulation) Act, 1976 has taken long time to decide that the petitioner is not holding the surplus land. This decision has been given on 16th November, 1983. As the matter was pending before the competent authority under the U.L.C. Act, the petitioner has not put any construction on the land. The Collector, Surat under its order dated 25th March, 1985 has cancelled the N.A. permission on the ground that the petitioner committed breach of the conditions subject to which the same was granted and further that it is a case of breach of provisions of ULC Act also as the petitioner cannot be permitted to make construction on the land without getting necessary permission under section 26 of the said Act. Against this order, the petitioner filed revision application before the Special Secretary, Revenue Department, State of Gujarat at Gandhinagar. This revision application was dismissed on 26th September, 1986. Hence, this special civil application before this court.

3. Reply to the special civil application has not

been filed by the respondents. Orally the counsel for the respondents made the submissions.

4. The counsel for the petitioner contends that it is not a case where N.A. permission granted in this case should have been cancelled by the Collector. It is true that the construction on the land in dispute has to be put within stipulated period but as the matter has to be cleared by the competent authority under the Urban Land (Ceiling & Regulation) Act, 1976, till that matter is finally decided, the petitioner could not have put the construction. The Collector himself has taken that the construction cannot be permitted unless the permission is granted by the competent authority under section 26 of the U.L.C. Act. When this is the approach of the Collector himself then for this breach of conditions the cancellation of N.A. permission could not have been ordered. It has next been contended that even if the breach was there it could not have been taken it to be a case where N.A. permission has to be cancelled as the original owner has already taken money and he was not cultivating the land. For cancellation of this N.A. permission this land will not come in the hands of the Government or it will not be resumed by the Government. It is a technical breach in the facts of this case of the condition subject to which N.A. permission has been granted and this order of cancellation of the same, what Mrs. Mehta contends is not fair, reasonable and justified.

5. Shri Mukesh Patel, learned counsel for the respondents, contended that where the permission has been granted on conditions then on breach thereof, the competent authority has all the powers to cancel the said permission and that what it has been done in the present case. It has next been contended that this permission has been granted in the year 1970 and this pretext of Urban Land (Ceiling & Regulation) Act, 1976 is hardly of any help to the petitioner. Shri Mukesh Patel admits that the matter under U.L.C. has been decided in this case on 16th November, 1983.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and I am satisfied that it is not a case where the respondent-Collector has acted fairly and reasonably to cancel the N.A. permission. One of the grounds given for cancellation of N.A. permission was that for construction on the land, the permission under section 26 of the authority under U.L.C. Act is necessary. This ground though would have been available at the relevant

time but this matter under U.L.C. has been decided on 16th November, 1983 and it was held that the petitioner is not having any surplus/excess land. In view of this decision of the competent authority under the U.L.C. Act, this ground no more survives. As the land with the petitioner was not in excess of ceiling limit he has all the right to put construction thereon without taking permission of the authority under U.L.C. Act under section 26 thereof. The U.L.C. Act was in force at the relevant time and the land holders had to file a declaration. Otherwise also he could not have put the construction on the land until the permission is granted to him under section 26 of the said Act by the competent authority. The petitioner was bonafide proceeding with the U.L.C. proceedings and unless this land is clear under the U.L.C. Act legally otherwise he could not have put the construction thereon. This aspect of the case has not been considered by the authorities below. The petitioner has acted bonafidely in the present case and rightly he has not put any construction thereon. It is unfortunate that this matter has been decided by the U.L.C. authority after the decision of the Collector. The petitioner in case would have put any construction on the land prior to its clearance under the ULC Act it would have been illegal. He had to face first notice under the U.L.C. Act and then another notice by the Collector under Land Revenue Code. It is not a case where the Collector, Surat shall have to cancel the N.A. permission. Technical breach at the most may be there but if we go by the facts of this case, and with specific reference to the fact that because of the provisions of the U.L.C. Act unless the U.L.C. authorities clear the land, the petitioner could not have put any construction on the land, the orders passed by the authorities below i.e. the Collector and confirmed by the State Government cannot be allowed to stand. The substance and not the form has to be considered. The Collector and the State Secretary are the officers of a welfare State. They are there to see that unnecessarily the citizens of the country are not troubled or harassed. They have to act bonafide and not only to see that they are sitting on the chair only to cancel the order. Their approach should have been to advance justice and not to curb justice. That is what precisely it has been done in the present case. Broadly and with the justice oriented approach the matter would have been considered, and which should have been considered then both the authorities could not have passed these orders in the facts of this case.

7. In the result, all these three special civil applications succeed and the same are allowed. The

impugned order therein i.e. the judgment and order dated September 26, 1986 passed by the Special Secretary, Revenue Department, State of Gujarat, annexure 'D' to these petitions is quashed and set aside and the N.A. permission granted to the petitioners in these cases are restored. Rule in all the three special civil applications is made absolute accordingly. However with no order as to costs.

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